

# DO NOT CALL CONTRACT

11-2610-001

**RECEIVED**

**JUL 09 2010**

## STATE OF SOUTH DAKOTA CONSULTING CONTRACT

**SOUTH DAKOTA PUBLIC  
UTILITIES COMMISSION**

AGREEMENT made and entered into this **9<sup>th</sup> day of July 2010**, by and between the **South Dakota Public Utilities Commission**, a state agency, of **500 E. Capitol Avenue, Pierre, SD 57501-5070**, (the "State") and **HenkinSchultz Communication Arts**, of **6201 S. Pinnacle Place, Sioux Falls, SD 57108** (the "Consultant").

The State hereby enters into this Agreement for services with Consultant in consideration of and pursuant to the terms and conditions set forth herein.

1. At the State's direction, outlined as necessary in separate correspondence, the Consultant will coordinate an in-state television media buy, including production and delivery of dubs, and provide the State with affidavits of broadcast for the South Dakota Do Not Call program. Media purchases not to exceed \$35,010; production costs not to exceed \$90.

2. The Consultant's services under this Agreement shall commence on **July 9, 2010**, and end on **June 30, 2011**, unless sooner terminated pursuant to the terms hereof.

3. The Consultant will not use State equipment, supplies or facilities. The Consultant's Employer Identification Number is

4. The State will make payment for services upon satisfactory completion of the services. The TOTAL CONTRACT AMOUNT is an amount not to exceed **\$35,100.00**. The State will not pay Consultant's expenses as a separate item. Payment will be made pursuant to itemized invoices submitted with a signed state voucher.

5. The Consultant agrees to indemnify and hold the State of South Dakota, its officers, agents and employees, harmless from and against any and all actions, suits, damages, liability or other proceedings that may arise as the result of performing services hereunder. This section does not require the Consultant to be responsible for or defend against claims or damages arising solely from errors or omissions of the State, its officers, agents or employees.

6. The Consultant, at all times during the term of this Agreement, shall obtain and maintain in force insurance coverage of the types and with the limits as follows:

**A. Worker's Compensation Insurance:**

The Consultant shall procure and maintain workers' compensation and employers' liability insurance as required by South Dakota law.

Before beginning work under this Agreement, the Consultant shall furnish the State with properly executed Certificates of Insurance which shall clearly evidence all insurance required in this Agreement and which provide that such insurance may not be canceled, except on 30 days'

prior written notice to the State. The Consultant shall furnish copies of insurance policies if requested by the State.

7. While performing services hereunder, the Consultant is an independent contractor and not an officer, agent, or employee of the State of South Dakota.

8. This Agreement may be terminated by either party hereto upon thirty (30) days written notice. In the event the Consultant breaches any of the terms or conditions hereof, this Agreement may be terminated by the State at any time with or without notice. If termination for such a default is effected by the State, any payments due to Consultant at the time of termination may be adjusted to cover any additional costs to the State because of Consultant's default. Upon termination the State may take over the work and may award another party an agreement to complete the work under this Agreement. If after the State terminates for a default by Consultant it is determined that Consultant was not at fault, then the Consultant shall be paid for eligible services rendered and expenses incurred up to the date of termination.

9. This Agreement depends upon the continued availability of appropriated funds and expenditure authority from the Legislature for this purpose. If for any reason the Legislature fails to appropriate funds or grant expenditure authority, or funds become unavailable by operation of law or federal funds reductions, this Agreement will be terminated by the State. Termination for any of these reasons is not a default by the State nor does it give rise to a claim against the State.

10. This Agreement may not be assigned without the express prior written consent of the State. This Agreement may not be amended except in writing, which writing shall be expressly identified as a part hereof, and be signed by an authorized representative of each of the parties hereto.

11. This Agreement shall be governed by and construed in accordance with the laws of the State of South Dakota. Any lawsuit pertaining to or affecting this Agreement shall be venued in Circuit Court, Sixth Judicial Circuit, Hughes County, South Dakota.

12. The Consultant will comply with all federal, state and local laws, regulations, ordinances, guidelines, permits and requirements applicable to providing services pursuant to this Agreement, and will be solely responsible for obtaining current information on such requirements.

13. Any notice or other communication required under this Agreement shall be in writing and sent to the address set forth above. Notices shall be given by and to **Leah Mohr, Deputy Executive Director, South Dakota Public Utilities Commission** on behalf of the State, and by **Joe Henkin**, on behalf of the Consultant, or such authorized designees as either party may from time to time designate in writing. Notices or communications to or between the parties shall be deemed to have been delivered when mailed by first class mail, provided that notice of default or termination shall be sent by registered or certified mail, or, if personally delivered, when received by such party.

14. In the event that any provision of this Agreement shall be held unenforceable or invalid by any court of competent jurisdiction, such holding shall not invalidate or render unenforceable any other provision hereof.

16. All other prior discussions, communications and representations concerning the subject matter of this Agreement are superseded by the terms of this Agreement, and except as specifically provided herein, this Agreement constitutes the entire agreement with respect to the subject matter hereof.

In Witness Whereof, the parties signify their agreement effective the date above first written by the signatures affixed below.

STATE

CONSULTANT

BY: 

Patricia Van Gerpen  
Executive Director  
South Dakota Public Utilities Comm.

(DATE) 7.9.10

BY: 

Joe Henkin  
Partner  
HenkinSchultz Communication Arts

(DATE) 7/7/10

- State Agency Coding (MSA Center) 2610770876
- State Agency MSA Company for which contract will be paid 3014
- Object/subobject MSA account to which voucher will be coded 5204110
- Name and phone number of contact person in State Agency who can provide additional information regarding this contract Leah Mohr, (605) 773-3201.